U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 04 2006

EAC 04 232 52965

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner describes himself as a "journalist, reporter, manager, teacher." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's initial submission consisted of three documents, specifically:

- A 1975 diploma from Tbilisi State University, conferring the "qualification of a PHILOLOGIST, TEACHER OF GEORGIAN LANGUAGE AND LITERATURE" after five years of study.
- A 1987 diploma from Tbilisi State University, conferring the "qualification of a JOURNALIST" after five years of study.
- A 2002 certificate from Women for Conflict Prevention and Cause of Peace in South Caucasus, certifying the petitioner's "training on the subject of 'Conflict Prevention, Cause of Peace [and] the Role of Women in Cause of Peace.'"

The initial submission included no explanation as to what, specifically, the petitioner proposes to do in the United States, or why the petitioner believes she qualifies for a waiver.

On April 6, 2005, the director issued a request for evidence, instructing the petitioner to submit an evaluation of the diplomas discussed above. The director also requested evidence to show that the petitioner meets the national interest guidelines set forth in *Matter of New York State Dept. of Transportation.*

In response, the petitioner submits evaluations showing that each of her diplomas is equivalent to a "Combined Bachelor's and Master's Degree . . . from a regionally accredited educational institution in the United States." Regarding her intended work in the United States, the petitioner states:

> The study of the history of Former Soviet Union clearly proved that the main reason of the tension in multicultural medium is an unawareness of cultural and intellectual heritage of other than your own nation. . . .
>
> The lack of knowledge of cultural and intellectual heritage of other than your own nations is very powerful force that causes many tough consequences: Ethnic conflicts, unstable society, poor economical development and the high risk of dominating of autocratic governments. . . .
>
> In the United States there are considerable number of Russian-speaking and Georgian-speaking immigrants. . . .Every of them are needed native-language-newspapers and also bi- and trilingual teachers too.
>
> Despite that I am working as independent freelancer journalist . . . , I already found a job at Georgian Cultural Center – Dialogue of Cultures. The official name of organization is "Amirani International Inc." . . . As you see from slogan of Organization, the main field of activity of "Amirani International Inc." is the dialogue of cultures. The purposes and aims of the organization perfectly match with my previous experience at the International Center for study and popularization of cultural and intellectual heritage – "Mermisi."
>
> With weekly Georgian-language newspaper "Iberia," that is published in NJ, we are going to establish English-Georgian-Russian languages daily newspaper that means dozens of employment possibility for lawfully residents and citizens of United States.

[*Sic.*] Several of the petitioner's former associates in Georgia attest to her professional credentials and experience. For instance, [redacted] president of the Mermisi International Center for Study and Popularization of Cultural and Intellectual Heritage, states that the petitioner was a co-founder and public relations head at that organization, and "made a considerable contribution to . . . compiling the encyclopedia 'Georgia – 3000.'" [redacted] chair of the Imereti Regional Organization of the Federation of Georgian Journalists, lists various positions that the petitioner held at a number of Georgian newspapers and television stations, and praises the petitioner as "a highly qualified professional journalist and a teacher."

The petitioner's references in the United States are also Georgian. Dr. [redacted] president of [redacted] International, Inc., states that the petitioner "started to volunteer at the Georgian Cultural Center and played an active social role. Now [the petitioner] is coordinating the relations with society." Dr. [redacted] states that Amirani intends to employ the beneficiary full-time. [redacted] editor-in-chief and publisher of *Mamuli*, a Georgian-language newspaper published in Jersey City, New Jersey, states that the petitioner writes articles for *Mamuli* and "takes intensive English courses to overcome language barrier for cooperation in American mass-media." Other witnesses assert that the petitioner was active in education and human rights issues during her career as a journalist in Georgia.

The director denied the petition, stating that the witness letters, while complimentary, do not show that the petitioner has had or is likely to have a national impact within the field of journalism in the United States. The director noted the limited appeal of Georgian- and Russian-language media in the United States, and

found that the petitioner's limited fluency in English did not put her in a position to have a significant impact in English-language journalism as of the filing date. The director also stated that the materials in the record do not distinguish the petitioner from other experienced journalists.

On appeal, the petitioner estimates that "about 30%" of the "more than one million" Russian- and Georgian-speakers in the tri-state area surrounding New York "will be our readers." The wording is not clear, but the petitioner seems to argue that, given this potential base of over 300,000 readers, the director should not have found that the petitioner's work lacks national scope. A local publication remains local, no matter how densely populated the particular locality.

The petitioner follows this argument by asking, rhetorically, "who said that the newspaper will be only Russian-language or Georgian language[?] . . . [T]he main language for our project will be English." Then, having asserted that she will primarily publish in English, the petitioner seems to argue that the director's observations about the petitioner's English fluency are "absolutely irrelevant."

The petitioner has, on appeal, taken issue with isolated observations or assertions by the director, but the petitioner has not offered any response to the director's broader finding about the petitioner's eligibility for the waiver. The petitioner has shown that she is a trained and experienced journalist, who has been and remains active in civic groups and who has prospects for employment within the Georgian expatriate community in the New York metropolitan area. These facts demonstrate that the petitioner is dedicated and employable in her field, but that is not the threshold to qualify for a national interest waiver. The petitioner has chosen to seek an immigrant classification that, by law, ordinarily requires a job offer including an approved labor certification. The national interest waiver is not simply an option, to be exercised at the alien's discretion, to avoid the labor certification process. It is, rather, an added benefit over and above the underlying immigrant classification. By seeking this additional immigration benefit, the petitioner voluntarily assumes an additional burden of proof, and the petitioner cannot meet this additional burden merely by showing that she is experienced and well regarded by her close colleagues.

Arguments regarding the Georgian and Russian communities carry little weight because nothing in the statute or regulations suggests that belonging to a particular national or ethnic group is a positive factor for the waiver. Eligibility for the waiver must rest on the specific merits of the individual alien, rather than membership in some broad class such as "Georgian journalist." Virtually every intending immigrant can claim special understanding or affinity to one immigrant community or another. One could also argue that, even if the petitioner's work has special relevance to the Georgian and Russian communities, this is just another way of saying that her work is of limited interest and importance outside of those communities.

The petitioner has argued that her skills and background qualify her for a national interest waiver, but she has not demonstrated that these skills and this background distinguish her in any meaningful way that applies under the guidelines in *Matter of New York State Dept. of Transportation.*

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest

waivers on the basis of national origin or the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.